

SECRETARY OF STATE[721]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State amends Chapter 22, "Voting Systems," Iowa Administrative Code.

These amendments are necessary due to the submission of a large number of Engineering Change Orders (ECOs) by voting equipment vendors. Chapter 22 currently does not provide the Board of Examiners for Voting Systems with any discretion to determine whether ECOs should be considered de minimis changes to the voting systems or whether they should be considered substantive modifications to the voting systems, requiring the voting systems to be recertified by the Board of Examiners before any of the changes can be implemented. In most cases, these ECOs will affect the ability of county commissioners to have existing voting equipment repaired.

Pursuant to Iowa Code section 17A.4(3), the Secretary of State finds that notice and public participation are unnecessary because the Board of Examiners must have in place a procedure to follow immediately to resolve the ECO issues that have already been submitted so county commissioners are not unduly prevented from moving forward with needed repairs to their voting equipment. In addition, these amendments rescind a rule which is no longer necessary due to changes in the law effective July 1, 2009.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Secretary of State further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments be made effective upon filing. These amendments confer a benefit upon the voting public by ensuring that there is a procedure for the Board of Examiners to follow in evaluating whether submitted ECOs represent a de minimis change to a voting system and can therefore be approved by the Board of Examiners without further testing or whether submitted ECOs represent a modification to a voting system requiring further testing by the Board of Examiners before the changes are approved to be used in the state.

These amendments are also published herein under Notice of Intended Action as **ARC 8245B** to allow for public comment.

These amendments are intended to implement Iowa Code chapter 52 and 2009 Iowa Acts, House File 475.

These amendments became effective October 2, 2009.

The following amendments are adopted.

ITEM 1. Amend rule **721—22.1(52)**, definitions of "Audio ballot," "Automatic tabulating equipment," "Ballot," "Certification," "Examiners," "Voting equipment" and "Voting machine," as follows:

"Audio ballot" means the presentation of the contents of a ballot on a ~~direct recording electronic voting machine~~ an electronic ballot marking device in a recorded format, played to the voter over headphones. ~~An audio ballot is used to make voting accessible to persons with visual disabilities.~~

"Automatic tabulating equipment" means apparatus, ~~including but not limited to electronic data processing machines,~~ that are utilized to ascertain the manner in which optical scan ballots have been marked by voters or by electronic ballot marking devices; and to count the votes marked on the ballots.

"Ballot" means the official document that includes all of the offices or public measures to be voted upon at a single election, whether they appear on one or more paper ballots. The term includes optical scan paper ballots designed to be read by automatic tabulating equipment. In appropriate contexts, "ballot" also includes conventional paper ballots.

"Certification" means formal approval of ~~voting machines or an~~ optical scan voting systems system for use in Iowa pursuant to Iowa Code sections 52.5 and 52.26 ~~and 2007 Iowa Acts, Senate File 369, section 7.~~

"Examiners" means the board of examiners for voting systems described in Iowa Code section 52.4 ~~as amended by 2007 Iowa Acts, Senate File 369, section 28.~~

“Voting equipment” means ~~voting machines and an~~ optical scan voting ~~systems~~ system which ~~are~~ is required by Iowa Code sections 52.5 and 52.26 ~~and 2007 Iowa Acts, Senate File 369, section 7,~~ to be approved for use by the examiners.

“Voting machine” means a direct recording electronic device ~~meeting the requirements of 2007 Iowa Acts, Senate File 369, section 7, subsections 1 and 2, and designated for use in casting, registering, recording, and counting votes at an election.~~

ITEM 2. Adopt the following new definitions of “De minimis change” and “Modification” in rule 721—22.1(52):

“De minimis change” means a change to a certified voting system’s hardware, the nature of which will not materially alter the system’s reliability, functionality, capability, security and operation. In order for a change to qualify as a de minimis change, it must not alter the reliability, functionality, capability, security and operability of the system. A de minimis change shall also ensure that when the hardware is replaced, the original hardware and the replacement hardware are electronically and mechanically interchangeable and have identical functionality and tolerances. A change shall not be considered de minimis if it has reasonable and identifiable potential to affect the system’s operation and compliance with applicable voting system standards.

“Modification” means a change to a certified voting system’s software or firmware. Modification also means a change to a certified voting system’s hardware that has the potential to affect the reliability, functionality, capability, security or operability of a system.

ITEM 3. Amend paragraphs 22.4(2)“a” and “b” as follows:

a. For each meeting or series of meetings held for the purpose of certifying ~~a voting machine, electronic voting system or voting booth~~ an optical scan voting system or component thereof.

b. For each meeting or series of meetings for reconsideration of ~~a voting machine, electronic voting system or voting booth~~ an optical scan voting system or component thereof after denial of certification.

ITEM 4. Rescind paragraphs 22.4(2)“c” and “d.”

ITEM 5. Amend subrule 22.5(8), introductory paragraph, as follows:

22.5(8) Descriptions of the equipment, including the methods used to comply with the requirements of ~~2007 Iowa Acts, Senate File 369, section 7, if the equipment to be examined is a voting machine, or Iowa Code section 52.26 if it is an optical scan voting system.~~ This description shall include an acknowledgment of the following requirements:

ITEM 6. Amend rule 721—22.7(52) as follows:

721—22.7(52) Consultant. If the examiners determine that a consultant is necessary to determine whether a system meets the requirements of Iowa law, ~~they~~ or whether a change to a voting system is de minimis or a modification, the examiners shall notify the vendor of the decision. The vendor may suggest the names of reliable independent test authorities to the examiners and may decline to submit the equipment to the examination of an individual for good reason.

A consultant ~~shall~~ may be employed if no other state has certified the equipment for use. The examiners may require a consultant if the equipment has been modified following certification by other states, or if the examiners believe it to be necessary.

If a test authority has been determined to be necessary by the examiners and a suitable consultant cannot be agreed upon by the examiners and the vendor, the equipment shall not be approved for use.

ITEM 7. Rescind rule 721—22.17(52) and adopt the following new rule in lieu thereof:

721—22.17(52) Changes to certified voting systems. The procedures in this rule shall be followed anytime a change is made to a certified voting system, including a change in tabulation software, firmware, or hardware.

22.17(1) Notification of change. The vendor shall notify the examiners of any changes in a certified voting system. The vendor shall provide the examiners with the following information at the time the vendor provides notice of the change(s):

- a. A description of the changes made.
- b. Reports of test results conducted by an accredited independent test authority, and any reports of test results conducted by or for other states following the changes to the voting system.
- c. Copies of manuals, instructions, advertisements and other documents submitted with the voting system's original application for certification that have been updated since the original application was submitted.
- d. An assessment from an accredited independent test authority of the change as either a de minimis change or a modification to the voting system.

22.17(2) Commencing review proceedings. Within seven days of receiving a voting system change notice from a vendor, the examiners shall commence review proceedings to independently determine whether the change submitted by the vendor is a de minimis change or a modification to the voting system. In making this independent determination, the examiners may use any means available, including hiring a consultant pursuant to rule 721—22.7(52).

22.17(3) De minimis changes. If the examiners determine a change to a voting system is de minimis, the examiners may approve the changes by motion and certify the changed voting system for use in the state.

22.17(4) Modifications to voting systems. If the examiners determine a change to a voting system is a modification to the voting system, the examiners shall require the vendor to submit a new application for certification and testing of the voting system pursuant to rules 721—22.5(52) to 721—22.11(52).

ITEM 8. Amend paragraph **22.18(1)“b”** as follows:

b. ~~Material changes~~ Modifications have been made in ~~the equipment~~ a certified voting system that ~~do have not comply with requirements for certification~~ been approved by the examiners.

ITEM 9. Rescind and reserve rules **721—22.19(52) to 721—22.29(52)**.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/21/09.